

### **REMARKS/ARGUMENTS**

Claims 1-4, 9, 11-18, 21 and 23 have been amended; claims 19, 20 and 22 have been canceled as redundant.

The description has been amended to state in words that which is plainly shown in the drawings, namely, that the step 19 extends laterally away from the wall 12.

Applicant notes with appreciation the Examiner's indication of allowability of claim 10 subject to it being written in independent form.

Applicant has not, at this time, written claim 10 in independent form based on its belief that the claim is now allowable in view of the allowability of claim 1 from which it depends, as more fully set forth herein below.

**Claims 1-3 and 9 stand rejected under 35 U.S.C. 102(b) as being anticipated by Rainbolt (US 6,494,006).**

Rainbolt '006 teaches a vent box constructed from sheet metal parts that are welded together and disposed between, and in vertical alignment with, the bales of a straw bale wall and the foundation for the wall. The vent box is thus a load-bearing member with a drainage floor 53 vertically aligned with, and thus directly below, the wall bales 14.

Rainbolt '006 must fail as a 102(b) reference for two reasons.

First, the top member 40 would not be considered by those skilled in the art as a "foundation wall," as asserted by the Examiner. Rainbolt '006 makes the distinction at Col. 4, lines 59-61, wherein it stated that the vent box 50 is "disposed between a foundation 10 and a wall 12 ." When the foundation of

Rainbolt '006 is limited to foundation 10, it is clear that the teachings of Rainbolt '006 do not anticipate Applicant's claim 1.

Second, although claim 1 as originally presented distinguishes over Rainbolt '006, Applicant has, nonetheless, amended claim 1 so that even reading Rainbolt '006 in the overly expanded manner set forth in the Office Action, the claim distinguishes Applicant's invention over the teachings of Rainbolt '006.

It is obvious that Applicant's invention is much more elegant than that of Rainbolt in that it does not require the manufacture of expensive sheet metal components disposed as a load-bearing member which add an additional potential load failure juncture.

In contrast, Applicant's invention involves a step extension of the foundation wall which is not load bearing and thus introduces no failure component, as does Rainbolt '006.

Claim 1, as now amended, describes "a step extending laterally and downwardly away from said foundation wall top surface whereby said step is outboard of and not vertically aligned with the bales."

For the reasons set forth above, claim 1 is patentably distinguishable over Rainbolt '006.

Claim 3, in stating that the wall and step are integral and formed of concrete, clearly distinguishes over Rainbolt '006. In rejecting claim 3, the Examiner states that the foundation is formed of concrete, but fails to show that the step is formed of concrete, which is clearly stated in claim 3. Claim 3

has been amended to add the word “both” so as to make explicit that which was clearly implicit in the claim as originally submitted. Applicant further challenges that foundation 10 and step 60 are integral in view of the fact that step 60 is formed of sheet metal and foundation 10 of concrete. While they may be attached, they are not integral.

The rejection of claim 9 appears to have a mistake in nominating a membrane as “53.” The membranes in Fig. 5 of Rainbolt ‘006 are 20 and 22 and do not abut the upper surface 53. In any event, claim 9 depends from claim 1 which is allowable as set forth above.

**Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainbolt ‘006 in view of David Mar.**

Applicant submits that claims 4 and 5 depending from claim 1, which is allowable, are also allowable.

**Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainbolt ‘006 in view of David Mar.**

Claims 6-8 are dependent from claim 1 and are, therefore, allowable along with claim 1.

**Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainbolt ‘006 in view of Rainbolt ‘820.**

Claim 11 is dependent on claim 1 and, as such, is allowable along with claim 1. In addition, claim 11 has been amended to make it imminently clear that the airspace is within the wall and not merely an attic space, as taught by Rainbolt ‘820.

Thus, while it is common practice in the building of structures to create an attic space, Applicant has created a novel structure in creating an airspace within the bale wall itself and venting just that space and not an entire attic space which includes space between, as opposed to within, walls.

The same argument applies to claim 15, which has also been amended to state that the airspace is between the interior membrane and the exterior membrane of the wall. Once again, no showing of this novel construction is to be found in any of the cited art.

**Claims 12-14, 16-20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Rainbolt and Rainbolt as applied to claim 11 and further in view of Mueller (US 4,214,511).**

Once again, claims 12 and 14 inherit the limitations of claim 11 which place the airspace and plenum within the wall and not merely in an overarching attic that extends over the entire structure. While Rainbolt '006 describes a bale wall structure, it does not teach any structure for the escape of moisture into the atmosphere from the top of the wall and Mueller and Rainbolt '820 do not deal with straw bale wall structures, nor wall structures in particular. Thus, Applicant's novel straw bale wall upper airspace and plenum are clearly novel and not suggested by the cited prior art. Nor would it be obvious to create an airspace within the wall itself from any of the cited references.

**Claim 21 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Rainbolt '006.**

Claim 21 has been amended by incorporating the limitations of claim 22, which has therefore been canceled. Claim 21 now includes the creation of an airspace at the top of and within the straw bale wall itself, which, as demonstrated above, is novel and clearly not anticipated by the two Rainbolt references. Thus, the rejection of claim 21 under 35 U.S.C. 103(a) should be withdrawn.

**Claim 23 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Rainbolt and Rainbolt in view of Mueller.**

Claim 23 has been amended to specify that the airspace is created within and at the top of the wall. Once again, this novel structure is not shown in the prior art.

#### **Conclusion**

Claims 1-4, 9, 11-18, 21 and 23 have been resubmitted for favorable consideration in view of the amendments to the claims and the arguments presented above.

Applicant has demonstrated that the claims that have been amended and resubmitted for favorable consideration teach novel structures in connection with straw bale walls that are not taught or suggested by the prior art or made obvious thereby.

Applicant has claimed a step extension to a foundation wall for use in connection with a straw bale wall that is not anticipated by the cited art in Rainbolt '006, which, by extreme contrast, teaches a vent box separate from the foundation and not an extension thereof. Also, Applicant has amended the

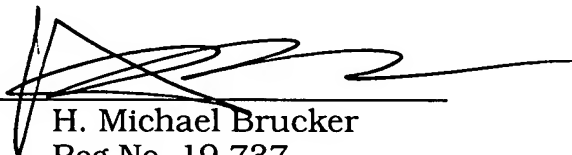
claims to more clearly specify that the airspace at the top of the straw bale wall is contained within the wall and the vents are from that airspace, which is clearly distinguishable from an attic space, which is what the Examiner has cited by way of Rainbolt '820 and Mueller '511.

For all of the reasons set forth above, Applicant respectfully requests that the claims now remaining the in the application be allowed.

Respectfully submitted,

Dated: August 28, 2007

By

A handwritten signature in black ink, appearing to read 'H. Michael Brucker', written over a horizontal line.

H. Michael Brucker  
Reg No. 19,737  
Attorney at Law  
5855 Doyle Street, Suite 110  
Emeryville, CA 94608  
(510) 654-6200